IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 15297 of 2004(U)

AGAINST THE ORDER DATED 28/11/03 IN OS 369 1979 IN EP.542/1992 of PRL.M.C.,IRINJALAKUDA

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PETITIONER:

TOMY, S/O. JOSEPH,
PAYYAPPILLY HOUSE, KORATTY P.O., THRISSUR.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS:

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1. MATHU, S/O. URUMIS,
VEZHAPARAMBIL HOUSE, KIZHAKKUMMURI VILLAGE,
MUKUNDAPURAM TALUK.

2. URUMIS, S/O. MATHY, -DO- -DO-.

3. ANTHONY, S/O. KANNAMPUZHA ANTHONY,
KIZHAKKUMMURI VILLAGE, MUKUNDAPURAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 15297 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE DECREE IN SA NO.506/1989 DT.21.1.1991.

EXT.P2 : TRUE COPY OF THE DELIVERY RECEIPT DT.06.01.1993 OF THE MUNSIFF COURT, IRINJALAKUDA.

EXT.P3 : TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN RP NO.121/91 DT.16.13.1993.

EXT.P4 : TRUE COPY OF THE PETITION FILED BY THE RESPONDENTS 1 AND 2 DT.18.10.1995 ALONG WITH THE ACCOMPANYING AFFIDAVIT.

EXT.P5 : TRUE COPY OF THE COMMISSION REPORT IN OS NO.369/79 IN EP NO.1420/95 DT.13.11.1997.

EXT.P6 : TRUE COPY OF THE ORDER OF THE PRINCIPAL MUNSIFF COURT, IRINJALAKUDA IN EA NO.1420/1995 DT.28.11.03.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 15297 OF 2004

Dated this the 18th day of June, 2007

JUDGMENT

A decree for recovery of possession on the strength of title was passed by the trial court and confirmed by the appellate Court and reconfirmed by this court in Second Appeal. But by Ext.P3 order this Court reviewed the judgment passed in Second Appeal and found that the petitioners(the respondents herein) are entitled to value of improvements and also to get back the amounts paid by them as advance under the agreement by sale which had been entered into by the parties. Pursuant to Ext.P3 order the respondents applied for issuance of a commission for determining the value of improvements and under the impugned order Ext.P6, the execution court has accepted the commissioner's report and found that the respondents are entitled for the value of improvements Rs.26,605/-.

2. There is no appearance for the respondents. As per the direction of this Court, a copy of this Writ Petition was served on Sri.Subash Chandra Babu, counsel who was appearing before the court below. There is no representation for him.

3. Heard Sri.Ranjith Thampan, counsel for the petitioner. He submits that it was not correct on the part of the learned execution court

to say that this Court has directed under Ext.P3 that value of improvements shall be paid by the petitioners to the respondents. Even though it would appear on a reading of Ext.P3 that such a direction is given, it will be seen in paragraph 6 of Ext.P3 that the execution court is directed to go into the question whether the version of the petitioner that delivery has already been effected is true, indicating thereby that the question of value of improvements will be dependent on answer to that question. It is without noticing that direction, that the learned Subordinate Judge has proceeded to issue the impugned order thereby ignoring the direction in Ext.P2. The learned counsel would invite my attention to Section 4 and Section 5(3) of the compensation for Tenants Improvements Act. He would read over to me the full text of Ext.P3.

4. In the nature of the decision being taken, I refrain from saying anything touching the merits of the matter. But it is seen from Ext.P6 that the learned Munsiff has not complied with the direction in Para 6 therein that the execution court has to go into the question whether the delivery has been effected on the date of Ext.P3 order. Obviously, this court noticed some merit in the submission which was made on behalf of the present petitioner that a person who is evicted already is not entitled for payment of compensation under the provisions of Kerala Compensation of Tenants Improvements Act. The above crucial aspect

of the matter has not been noticed by the learned Munsiff.

Under these circumstances I set aside Ext.P6 on that reason alone, and direct the learned Munsiff to take a fresh decision on the issue after hearing the petitioner and the respondents. Fresh decision as directed above will be taken by the learned Munsiff at his earliest and at any rate within four months of receiving copy of this judgment. Before taking fresh decision the learned Munsiff will ensure that the direction in Ext.P3 that the petitioner pays back the advance amounts to the respondent is complied with by him.

The Writ Petition is allowed to the above extent. No costs.

PIUS C. KURIAKOSE, JUDGE

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